

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

19-CR-576 (BMC)

4 United States Courthouse  
Brooklyn, New York

5 -versus-

October 07, 2020  
9:00 a.m.

6 GENARO GARCIA LUNA,

7 Defendant.

8 -----x  
9 TRANSCRIPT OF CRIMINAL CAUSE FOR STATUS CONFERENCE  
10 BEFORE THE HONORABLE BRIAN M. COGAN  
11 UNITED STATES DISTRICT JUDGE

12 APPEARANCES

13 For the Government: UNITED STATES ATTORNEY'S OFFICE  
14 Eastern District of New York  
271 Cadman Plaza East  
15 Brooklyn, New York 11201  
16 BY: MICHAEL ROBOTTI, ESQ.  
RYAN HARRIS, ESQ.  
ERIN REID, ESQ.  
17 Assistant United States Attorneys

18 For the Defendant: BY: CESAR DECASTRO, ESQ.

19 Court Reporter: Rivka Teich, CSR, RPR, RMR, FCRR  
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20 Proceedings recorded by mechanical stenography. Transcript  
21 produced by computer-aided transcription.

## STATUS CONFERENCE

1 (Video Conference.)

2 THE COURTROOM DEPUTY: United States V. Luna, docket  
3 19-CR-576.

4 Counsel state your appearances starting with the  
5 Government.

6 MR. ROBOTTI: Good morning, your Honor. Mike  
7 Robotti Ryan Harris and Erin Reid for the United States.

8 THE COURT: Okay. For the defense?

9 MR. DE CASTRO: Good morning, your Honor. Cesar De  
10 Castro and Valerie Gottlieb for defendant Luna appearing via  
11 video.

12 THE COURT: All right. Anyone else need to note an  
13 appearance?

14 I'll note the defendant is here, he's being assisted  
15 by an interpreter who is on the phone.

16 I seem to be hearing someone speaking Spanish other  
17 than the interpreter. What is with that? Maybe it's just an  
18 echo on the interpreter. If anyone is listening, they are to  
19 mute their audio on their computer or the phone.

20 Okay, we are here for an arraignment and status  
21 conference. The arraignment is on a superseding -- Mr. Luna  
22 if you don't understand something that I say, just raise your  
23 hand to let me know and I'll rephrase it.

24 THE DEFENDANT: Thank you.

25 THE COURT: You're here because the Grand Jury has

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1 returned a superseding Indictment charging you with a number  
2 of crimes. The Superseding Indictment contains five counts,  
3 all alleging a crime that you were alleged to have engaged in  
4 between 2001 and the present.

5 Before I ask you, let me ask you -- is there someone  
6 speaking Spanish?

7 THE INTERPRETER: I cannot hear what is being said.  
8 I ask that people who are listening to mute their phones.

9 THE COURT: I just said that to my deputy clerk.

10 Can they be muted, Ms. Clarke.

11 COURTROOM DEPUTY: Yes, Judge.

12 THE INTERPRETER: There are people speaking Spanish  
13 and it is not the defendant.

14 THE COURT: I know that, I hear Mexican reporters.  
15 That's what I hear and I don't want to hear it. If they are  
16 not muted, I will have to clear the video call.

17 Ms. Clarke, can you mute everyone but me?

18 COURTROOM DEPUTY: One moment, Judge.

19 THE COURT: Melanie, I can't hear you, your mic is  
20 off.

21 COURTROOM DEPUTY: Judge, I'm muting it.

22 THE COURT: We'll standby for a moment to mute the  
23 people who are speaking Spanish.

24 I've asked the Mexican press repeatedly to stop  
25 speaking in a way that can be heard on the phone. It's

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1 interrupting the conference. If I can't continue -- now I'm  
2 hearing cropping by the press -- if I cannot continue I will  
3 stop this call and reconvene it at a later time. I'm going to  
4 ask the Mexican participants to, please once again, silence  
5 your mic, turn it on mute.

6 THE INTERPRETER: He's --

7 THE COURT: Say that again?

8 THE INTERPRETER: A male said, he's scolding us.

9 THE COURT: Well, that's fine for that person to say  
10 that, but I don't want to hear it.

11 My request to have those people who are supposed to  
12 be listening on the call turn off their mic has not been  
13 complied with. I'm going to adjourn this conference and we'll  
14 find a different way to hold it. The time will be set  
15 subsequently.

16 For now unless defense counsel or the prosecutor --  
17 it will not go forward. We will notify you of the time, the  
18 conference will be continued. Thank you.

19 (Proceeding adjourned.)

20 (Proceeding reconvening.)

21 THE COURT: We will continue with the arraignment  
22 and status conference.

23 I do want to note that while I think the press is  
24 still listening to the call and we cannot hear them. I want  
25 to advise them, under the rules of this Court and of the

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1 United States, they are prohibited from photographing,  
2 recording or rebroadcasting court proceedings. Violation of  
3 that prohibition may result in sanctions, including removal of  
4 court-issued media credentials, restricted entry for future  
5 hearings, and denial of entry to future hearings, or any other  
6 sanctions that the Court deems necessary.

7 Now, picking up where we were before.

8 MR. ROBOTTI: Judge, just one preliminary matter, a  
9 request, could we confirm the defendant's consent to have his  
10 arraignment conducted by video under Rule 10?

11 THE COURT: First I will hear from defense counsel  
12 as to whether there is that consent, Mr. De Castro?

13 MR. DE CASTRO: Yes, Judge, there is that consent.  
14 I've spoken to Mr. Garcia Luna about appearing via video  
15 conference for this proceeding.

16 THE COURT: Mr. Garcia Luna, is that correct, do you  
17 consent to doing this proceeding by video?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Mr. Robotti, do you think I need to make  
20 a finding under the CARES Act?

21 MR. ROBOTTI: No, your Honor. I think this is just  
22 a Rule 10(c) matter, so that is sufficient.

23 THE COURT: Mr. Garcia Luna, as I was saying before,  
24 the Superseding Indictment here contains five counts, all  
25 alleging that you committed crimes between 2001 and the

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1 present. I'm going to summarize each count for you.

2 Count One accuses you of being in a continuing  
3 criminal enterprise. Specifically it alleges that you  
4 committed six violations of law, which I'll go through with  
5 you, that you committed those violations with five or more  
6 people, that you supervised or managed those people, and that  
7 you obtained substantial income from doing that.

8 Under Count One, the first three violations of law  
9 with which you are charged allege that you worked with others  
10 in obtaining cocaine from outside the United States and  
11 distributing it within the United States.

12 MR. DE CASTRO: I'm sorry to interrupt. I note the  
13 court reporter dropped off the screen. I'm not sure if she is  
14 present or not.

15 THE COURT REPORTER: I am still present.

16 THE COURT: The amount for these three violations  
17 are approximately 5,000 kilograms on or about September 13,  
18 2008; 23,000 kilograms on or about October 30, 2007;  
19 19,000 kilograms on or about March 18, 2007 respectfully.

20 The fourth, fifth and sixth violation of Count One  
21 all allege that you worked with others in distributing  
22 approximately 1997 kilograms of cocaine on or about  
23 January 28, 2003; 1925 kilograms on or about August 16, 2002;  
24 and 1923 kilograms on or about May 24, 2002. That's Count  
25 One.

7  
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1                   Count Two accuses you of being a member of a  
2 conspiracy to obtain cocaine from outside the United States to  
3 distribute it within the United States.

4                   Count Three accuses you of being a member of a  
5 conspiracy to distribute and possess with intent to distribute  
6 cocaine within the United States.

7                   Count Four accuses you of being a member of a  
8 conspiracy to import cocaine into the United States from  
9 outside the United States.

10                  And Count Five alleges that on or about June 1st,  
11 2018, you falsely represented to U.S. Customs authorities that  
12 you had never committed a crime for which you were not  
13 arrested.

14                  There is also a forfeiture allegation in the  
15 Superseding Indictment that seeks to recover any money or  
16 property that you received as a result of the charged crimes  
17 or traceable to those crimes.

18                  Mr. De Castro, have you reviewed the Superseding  
19 Indictment with your client?

20                  MR. DE CASTRO: Yes, I have, your Honor.

21                  THE COURT: Do you have any concern as to whether he  
22 understands the Superseding Indictment?

23                  MR. DE CASTRO: No concerns at all.

24                  THE COURT: Do you waive reading of the Indictment  
25 beyond the summary that I just put on the record?

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1                   MR. DE CASTRO: Yes, we waive the public reading and  
2 we ask that the record --

3                   THE COURT: Is that a plea of not guilty to all five  
4 counts?

5                   MR. DE CASTRO: Yes, your Honor.

6                   THE COURT: That plea is entered not guilty to all  
7 five counts.

8                   Now I have the status report that has been  
9 submitted, which sounds fine. It's long, but I understand why  
10 it needs to be long. Is there anything we need to do beyond  
11 setting the next date and excluding time until that date?

12                  MR. ROBOTTI: Not from the perspective of  
13 Government, your Honor.

14                  MR. DE CASTRO: Judge, the only thing I would add is  
15 on page two of the status report we had mentioned that there  
16 was some technological issues with respect to sharing material  
17 via video with my client. Yesterday we were actually able to  
18 do that via computer so it worked. It will be very tedious to  
19 do it that way but it did work.

20                  THE COURT: Thank you for stating that. I would  
21 urge the parties to not be content with merely adequate, but  
22 to keep working and see if the method of communicating with  
23 documents can be improved.

24                  MR. ROBOTTI: Thank you, Judge. We'll continue to  
25 work with the defense and the MDC on this issue.

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1           I just wanted to note that we did contact the MDC  
2 and they advised us that the defense also has the option of  
3 meeting with the defendant in person to review those  
4 materials. So that is another option for them.

5           THE COURT: Okay. What is the date of the next  
6 conference?

7           COURTROOM DEPUTY: December 7 at 10:30 a.m.

8           THE COURT: Does that work for the lawyers?

9           MR. ROBOTTI: Yes, Judge.

10           MR. DE CASTRO: I'm sorry, did Ms. Clarke say  
11 December 7?

12           THE COURT: Yes.

13           MR. DE CASTRO: Yes, that's fine.

14           THE COURT: Okay, time is excluded until then as I  
15 have previously designated this case as complex, and because  
16 of the unusual circumstances surrounding the pandemic  
17 communications between counsel and his client which has been  
18 made more difficult and it takes more time. I find that the  
19 ends of justice outweigh the interest of the public and the  
20 defendant and a speedy trial so that the complexities can be  
21 adequately addressed, both the case complexities and the  
22 social complexities.

23           Anything further?

24           (Continued on next page.)

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1 MR. ROBOTTI: No, Judge. Thank you.

2 THE COURT: Thank you all for calling in. Thank you  
3 Mr. Garcia Luna.

4 (Whereupon, the matter was concluded.)

5 \* \* \* \*

6 I certify that the foregoing is a correct transcript from the  
7 record of proceedings in the above-entitled matter.

8 /s/ Rivka Teich  
9 Rivka Teich, CSR RPR RMR FCRR  
Official Court Reporter  
Eastern District of New York

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